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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA
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9 TRAVIS D. FONNESBECK,)

3:18-cv-00347-MMD-WGC

10 Plaintiff,)

ORDER

11 vs.)

Re: ECF Nos. 5, 12

12 ELKO COUNTY SHERIFF'S)
13 DEPARTMENT, *et al.*,)

14 Defendants.)
15

16 Before the court are Plaintiff's Motions for the Appointment of Counsel (ECF Nos. 5, 12).
17 Plaintiff claims he "is having real trouble getting the info from Elko Co. Sheriffs that I believe is
18 detrimental (sic) to my case." (ECF No. 5.) Plaintiff states "I'm not sure who I need to write in order
19 to obtain video tapes/recordings from Red Lion Casino, Walmart, and Police Reports as I am not getting
20 any responses." (*Id.*)

21 A litigant in a civil rights action does not have a Sixth Amendment right to appointed counsel.
22 *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). In very limited circumstances, federal courts
23 are empowered to request an attorney to represent an indigent civil litigant. The circumstances in which
24 a court will grant such a request, however, are exceedingly rare, and the court will grant the request
25 under only extraordinary circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800
26 (9th Cir. 1986); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

27 A finding of such exceptional or extraordinary circumstances requires that the court evaluate both
28 the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to articulate his claims

1 in light of the complexity of the legal issues involved. Neither factor is controlling; both must be viewed
2 together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991), *citing Wilborn*,
3 *supra*, 789 F.2d at 1331. Plaintiff has shown an ability to articulate his claims. (ECF Nos. 1, 5, 12.)

4 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

5 If all that was required to establish successfully the complexity of the
6 relevant issues was a demonstration of the need for development of
7 further facts, practically all cases would involve complex legal issues.
8 Thus, although *Wilborn* may have found it difficult to articulate his
9 claims *pro se*, he has neither demonstrated a likelihood of success on the
10 merits nor shown that the complexity of the issues involved was
11 sufficient to require designation of counsel.

12 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying the
13 request for appointment of counsel because the Plaintiff failed to establish the case was complex as to
14 facts or law. 789 F.2d at 1331.

15 Although Plaintiff's complaint was dismissed with leave to amend (ECF No. 8), the substantive
16 claims involved in this action are not unduly complex.

17 Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of the
18 likelihood of success on the merits of his claims. In fact, Plaintiff's motions (ECF Nos. 5, 12) contain
19 no discussion of why Plaintiff believes he will prevail in this action. That flaw alone is fatal to
20 Plaintiff's request for this court to exercise its discretion to appoint counsel.

21 While any *pro se* inmate such as Mr. Fonnesebeck would likely benefit from services of counsel,
22 that is not the standard this court must employ in determining whether counsel should be appointed.
23 *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

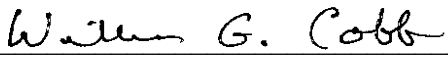
24 The United States Supreme Court has generally stated that although Congress provided relief for
25 violation of one's civil rights under 42 U.S.C. § 1983, the right to access to the courts is only a right to
26 bring complaints to federal court and not a right to discover such claims or to litigate them effectively
27 once filed with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

28 The court does not have the power "to make coercive appointments of counsel." *Mallard v. U. S.*
Dist. Ct., 490 US 296, 310 (1989). Thus, the Court can appoint counsel only under exceptional
circumstances. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) [cert den 130 S.Ct. 1282 (2010)].
Those exceptional circumstances do not exist in this case.

1 In the exercise of the court's discretion, it **DENIES** Plaintiff's motions (ECF Nos. 5, 12).

2 **IT IS SO ORDERED.**

3 DATED: August 20, 2018.

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6 WILLIAM G. COBB

7 UNITED STATES MAGISTRATE JUDGE
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